IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1094 (S/B) of 2001
Old Number
Writ Petition No. 13554 of 1988

Dhirendra Datt Saklani,
Son of Sri Bijendra Datt Saklani,
At present Headmaster in Purviya
Madhyamik Vidyalaya, Dobata, Tehri
District -Tehri Garhwal. **……Petitioner**

V e r s u s

1. State of Uttar Pradesh.
2. Zila Basic Shiksha Adhikari, Tehri Region, Tehri.
3. The Director of Basic Education, U.P., Allahabad.
4. Director, Asthaniya Nidhi Lekha Pariksha Vighag, U.P., Allahabad.

……Respondents

Hon'ble M.M. Ghildiyal, J.

1. Heard Sri D.C.S. Rawat, holding brief of Sri Rajendra Dobhal, learned counsel for the petitioner and learned standing counsel for the respondents.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:

   (a) issue a writ, order or direction in the nature of Certiorari calling for record of the petitioner's case and quashing the order of Zila Basic Shiksha Adhikari, Tehri – Region, Tehri i.e. respondent no. 2 dated 15.01.1988 (Annexure No. 3) as well as dated 15.03.1988 (Annexure No. 6 to the writ petition).

   (b) Issue a writ, order or direction in the nature of Mandamus directing the respondents not to make any recovery from the petitioner in pursuance to the orders dated 15.01.1988 as well as 15.03.1988.

(c) *Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstance of the case.*

(d) *Award costs of this petition to the petitioner.*

3. The submission of the petitioner is that on 15.01.1988. an order was passed by Dy. Inspector of School, Tehri Garhwal, Tehri for recovery of sum of Rs. 3218.20 from the petitioner, who was working as Assistant Teacher on the ground that he was paid salary in the pay scale of Rs. 450 – 720 whereas he was entitled to receive salary in the pay scale of Rs. 400 – 620. The excess payment made to the petitioner was brought into the knowledge of the respondents by the Audit team.

4. Learned counsel for the petitioner has submitted that since the higher pay scale, if at all, was granted to the petitioner, that was not because of misrepresentation by the petitioner but because of wrong construction made by the competent authority who has granted higher pay scale. In these circumstances, the amount alleged to have been made to the petitioner in excess cannot be recovered from the petitioner. In support of his argument, he has relied upon judgment of Hon'ble Apex Court passed in the case of Sahib Ram Vs. State of Haryana and others reported in 1995 (Supp.) 1 SCC page 18 wherein the Hon'ble Apex Court in para 5 has held as under:

"Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised

scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pays scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

5. It is not the case of the respondents that the petitioner has obtained higher pay scale by making misrepresentation before the respondents, in such circumstances, the case of the petitioner is squarely covered by the aforesaid judgement of Hon'ble Apex Court.

6. Respondents are not correct in passing the order for recovery of excess amount paid to the petitioner.

7. For the reasons recorded above, writ petition is allowed. Orders dated 15.01.1988 and 15.03.1988 are quashed. No order as to costs.

(M.M. Ghildiyal, J)

July 19, 2006
SKSharma